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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/374,117      08/16/99      FORTE

N      PM-251091

IM52/0809  
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EXAMINER
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ROCHE, L

ART UNIT	PAPER NUMBER
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1771

DATE MAILED:

08/09/01

*11*

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/374,117

Applicant(s)

FORTE, NICHOLAS F.

Examiner

Leanna Roche

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 26-29 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-29 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

Applicant's amendments and formal drawings filed June 14, 2001 have been fully considered and entered. Applicant's amendments and the submission of formal drawings are sufficient to overcome the previous objections under 37 CFR 1.84(p)(5) in Paper No. 6. Applicant's submission of amendments to the abstract is sufficient to overcome the previous objection to the abstract as set forth in Paper No. 6. The objection to claim 27 based on minor informalities as set forth in Paper No. 6 has been overcome by Applicant's amendment. Thus, the objection to the drawings, the objection to the description of the drawings within the specification, and the objection to the abstract, and the objection to claim 27 based on minor informalities have all been withdrawn. Applicant's amendment to claim 29 is sufficient to overcome the previous rejection under 35 USC 112, with respect to a lack of antecedent basis. Therefore, the rejection of claim 28 under 35 USC 112 has been withdrawn.

***Specification***

The disclosure is objected to because of the following informalities: The use of the trademarks DOW, BASF, HERITAGE, AMPACET, PEBAX, ATOCHEM, HYTREL, DUPONT, VITON, LOTADER, PLEXAR and ASTM have been noted in this application. They should be capitalized wherever they appear and be accompanied by their generic terminology.

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Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langley (USPN 5560974) in view of Reed et al. (USPN 5653699).

The teachings of Langley are substantially as set forth in Paper No. 6. Langley discloses the claimed invention, but does not specifically disclose outer monolithic layers containing a hydrophilic polymeric resin capable of absorbing and desorbing moisture and providing a barrier to water and microorganisms. Reed is directed to a laminate structure which provides a barrier against bacterial contamination while maintaining controlled management of absorption and evaporation of moisture. Reed is comprised of a relatively thin film layer of continuous, monolithic, hydrophilic material substantially free of particulate filler (Applicant's C layer), and at least one exudates transport layer (Applicant's D layer). It would have been obvious to a person having ordinary skill in the art at the time this invention was made to combine the teachings of Langley and Reed, motivated by the desire to produce a laminate structure which

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provides a barrier to penetration by pathogens and prevents the passage of blood or other body fluids (Langley Column 4 lines 21-22 and Column 1 lines 18-19) while also possessing a differential moisture vapor transmission rate for creating an optimally moist wound healing environment (Reed Column 6 lines 30-47).

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al (USPN 5653699) in view of Langley (USPN 5560974).

Reed is directed to a laminate structure which provides a barrier to liquids and against bacterial contamination while being capable of maintaining controlled management of absorption and evaporation of moisture. Reed is comprised of a relatively thin film layer of continuous, monolithic, hydrophilic material substantially free of particulate filler (Applicant's C layer), and at least one exudates transport layer (Applicant's D layer). The exudates transport layer of Reed may be comprised of a microporous membrane or hydrophilic adhesive, the transport layer of Reed being capable of forming a lamina with the film layer and being entirely contiguous with the monolithic film layer.

Reed does not specifically disclose a three-layer film. However, it would have been obvious to the skilled artisan at the time the invention was made to have produced a three-layer film, motivated by the desire to produce a breathable film material with biological barrier properties which has increased durability, i.e. resistance to tearing, due to its multiple layers. Additionally, Langley discloses a composite constructed of a microporous thermoplastic film layer having non-woven layers bonded on both sides of the microporous film. It would have been obvious to combine the teachings of Reed

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and Langley, motivated by the desire to produce a laminate structure which exhibits vapor transmission, fluid blockage, and strength (Langley Column 1 lines 29-34).

***Response to Arguments***

Applicant's arguments with respect to claims 26-29 and 32 have been considered but are moot in view of the new ground(s) of rejection.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leanna Roche whose telephone number is 703-308-6549. The examiner can normally be reached on Monday through Friday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on 703-308-1261. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

*Leanna Roche*

lmr  
July 31, 2001

*Blaine Copenheaver*  
BLAINE COPENHEAVER  
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